

Attorney for Plaintiffs

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

Defendant


## STIPULATION TO AMEND THE COMPLAINT

- 1) The Defendant and Plaintiff in this case hereby stipulate to Amend the Complaint to include WM Ebert Construction Inc. as a Defendant in this case.
- 2) The Proposed Amended Complaint is attached to this Stipulation and Marked Joint Exhibit 1.

1        3)        Defense counsel for Barret Business Services, Inc., will also represent Defendant  
2                WM. Ebert Construction, inc. and has agreed to accept service of the amended  
3                complaint on behalf of Defendant WM. Ebert Construction, Inc.

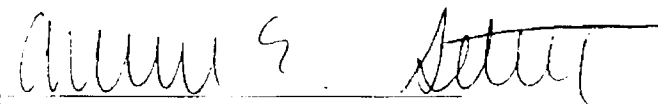
4        4)        Defense Counsel will file an Answer for WM Ebert Construction, Inc. by October 29,  
5                2007.

6  
7        Dated: 10/23/07

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10         
11       James Dal Bon

12       Dal Bon & Wang  
13       Attorney for Plaintiff Jamie Moreno

14  
15       Dated: 10/23/07

16         
17

18       Ann Soter  
19       Curiale, Dellaverson, Hirschfield & Kraemer  
20       Attorney for Defendants Barret Business System Inc. and  
21       WM. Ebert Construction, Inc.

1  
2  
3 IT IS SO ORDERED:  
4  
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6 DATED: 12/7/07

7  
8   
9 HONORABLE JEREMY FOGEL

10 UNITED STATES DISTRICT COURT JUDGE  
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# **EXHIBIT 1**

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(408)292-1040  
(408)292-1045

Attorney for Plaintiffs

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

JAIME MORENO,	)	Case No. C07 00856 JF
	)	
Plaintiff,	)	FIRST AMENDED COMPLAINT
	)	
vs.	)	1) Violations of the Federal Fair Labor
	)	Standards Act;
	)	2) Violation of California Labor Code
WM. EBERT CONSTRUCTION, INC.	)	Section 510;
	)	3) Violation of California Business and
BARRET BUSNISS SERVICES, INC. , and	)	Professions Code Section 17200;
	)	4) Violation of California Labor Code
DOES 1-10	)	Section 201;
	)	5) Violation of California Labor Code
Defendant	)	Section 226.7.
	)	
	)	

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SUBJECT MATTER JURISDICTION AND VENUE

1. This Court is a proper venue, since all events giving rise to this lawsuit have occurred in this district.
2. Subject matter jurisdiction of this action of this Court is based upon Fair Labor Standards Act, 29 U.S.C. §§201 et. seq. and the pendant jurisdiction of this Court.

GENERAL ALLEGATIONS

3. At all times relevant herein Plaintiff JAIME MORENO was a resident of San Jose, California.
4. At all times relevant herein, Plaintiff was an employee of defendant BARRET BUSNISS SERVICES, INC. business entity, located in Sunnyvale, California.
5. At all times relevant herein, Plaintiff was an employee of defendant WM. EBERT CONSTRUCTION, INC. business entity, located in Morgan Hill, California.
6. At all times relevant herein, Defendants BARRET BUSNISS SERVICES, INC. and WM. EBERT CONSTRUCTION, INC. were joint employers of Plaintiff Jaime Moreno.
7. Individual defendants DOES 1-10 were, according to information and belief, officers, owners, or employees of BARRET BUSINESS SERVICES, INC., and or WM. EBERT CONSTRUCTION, INC. having control over the Plaintiff's work condition and work situation.
8. Defendants jointly employed Plaintiff as a painter in a non exempt position.
9. Plaintiff was according to information and belief, an employee of both Defendant BARRET BUSNISS SERVICES, INC. and WM. EBERT CONSTRUCTION, INC. acting in the normal course and scope of his employment duties with Defendants.
10. During the course of Plaintiff's employment with BARRET BUSNISS SERVICES, INC. and WM. EBERT CONSTRUCTION, INC. Plaintiff regularly worked more than 8 hours per day and 40 hours per week, hours for which Plaintiff was not properly compensated.

COUNT ONE: VIOLATION OF CA LABOR CODE SECTION §510

FAILURE TO PROPERLY PAY OVERTIME WAGES

11. Plaintiff re-alleges and incorporates paragraphs 1-10 as if fully stated herein.
12. At all times relevant herein, California Labor Code Section 501, which applies to Plaintiff's employment by defendants, provided that all employees are entitled to

1 payment at the rate of time and one half for hours in excess of 8 in one day, or 40 hours  
2 in one week, and double time for hours in excess of 12 in one day.

3 13. Labor Code Section 1194 provides that it is unlawful for employers not to make the  
4 required overtime payments identified in the preceding paragraph and that employees not  
5 paid such payments can recover any monies owed by civil action.

6 14. Under the provisions of Labor Code §510, Plaintiff should have been paid a total of  
7 approximately \$370,462.75 in total wages, including overtime hours.

8 15. Over the course of employment, Plaintiff received only approximately \$334,400.00 in  
9 wages.

10 16. Defendants therefore owe Plaintiff the sum of approximately \$36,062.75, representing  
11 the difference between the amount of wages owed pursuant to California Labor Code  
12 §510 and the amounts actually paid to Plaintiff. Specific amounts earned, already paid to,  
13 and owed

14 17. Defendants have failed and refused and continue to fail and refuse to pay Plaintiff the  
15 amount owed.

16 18. Defendants' failure to pay Plaintiff the required sum violates the provisions of Labor  
17 Code Sections 510 and 1194 and is therefore unlawful.

18 19. Pursuant to Labor Code Section 1194(a), Plaintiff requests that the court award Plaintiff  
19 reasonable attorney's fees and costs incurred by him/her in this action.

20 **COUNT TWO: VIOLATION OF THE FAIR LABOR STANDARDS ACT**

21 **FAILURE TO PROPERLY PAY OVERTIME WAGES**

22 20. Plaintiff re-alleges and incorporates paragraphs 1-19 as if fully stated herein.

23 21. At all relevant times herein, Plaintiff's employment was subject to the provisions of the  
24 Fair Labor Standards Act of 1938, as amended ("FLSA"), 29 U.S.C. § 201, et seq. and  
25

1 Plaintiff was an individual employee covered by virtue of Plaintiff's direct engagement in  
2 interstate commerce.

3 22. The FLSA, 29 U.S.C. § 207 requires all employees to be paid overtime for work  
4 performed in excess of forty hours per week, unless specifically exempted by the law.

5 23. Although Plaintiff was not so exempt during employment with BARRET BUSINESS  
6 SERVICES, INC., defendants knowingly caused and permitted Plaintiff to regularly  
7 work in excess of forty hours per week without paying Plaintiff one and one half of  
8 Plaintiff's regular rate of pay.

9 24. By not paying overtime wages in compliance with the FLSA, defendants violated  
10 Plaintiff's rights under the FLSA.

11 25. Under the terms of the FLSA, Plaintiff should have been paid a total of approximately  
12 \$370,462.75 in total wages, including overtime hours, for all hours worked by Plaintiff.

13 26. Over the course of their respective employments, Plaintiff received only approximately  
14 \$334,400.00 in wages.

15 27. Defendants therefore owe Plaintiff the sum of approximately \$36,062.75, representing  
16 the difference between the amount of wages owed pursuant to the FLSA and the amounts  
17 actually paid to Plaintiff.

18 28. Therefore, as a direct and proximate result of defendants' failure to pay proper wages  
19 under the FLSA, Plaintiff incurred general damages in the form of lost overtime wages.

20 29. Defendants intentionally, with reckless disregard for their responsibilities under the  
21 FLSA, and without good cause, failed to pay Plaintiff proper wages, and thus defendants  
22 are liable to Plaintiff for liquidated damages in an amount equal to lost overtime wages,  
23 pursuant to 29 U.S.C. § 216(b) of the FLSA.  
24  
25



1 30. Plaintiff was required to retain legal assistance in order to bring this action and, as such,  
2 is entitled to an award of reasonable attorney's fees pursuant to 29 U.S.C. § 216(b) of the  
3 FLSA.

4 COUNT THREE: VIOLATION OF CA LABOR CODE SECTION 201

5 FAILURE TO PAY WAGES DUE AND "WAITING TIME" PENALTIES

6 31. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-30 as if fully stated  
7 herein.

8 32. At the time Plaintiff's employment with BARRET BUSINESS SERVICES, INC. was  
9 terminated, defendant's owed Plaintiff certain unpaid overtime wages.

10 33. Failure to pay wages owed at an employee's termination as required by Labor Code §201  
11 subjects the employer the payment of a penalty equaling up to 30 days wages, as  
12 provided for in Labor Code § 203.

13 34. As of this date, Defendants have failed and refused, and continue to fail and refuse, to  
14 pay the amount due, thus making defendants liable to Plaintiff for penalties equal to thirty  
15 (30) days wages in excess of approximately \$7,529.41.

16 35. Pursuant to Labor Code Section 218.5, Plaintiff requests that the court award Plaintiff  
17 reasonable attorney's fees and costs incurred in this action.

18 36. Pursuant to Labor Code Section 218.6, Plaintiff requests that the court award interest on  
19 all due and unpaid wages, at the legal rate specified by Civil Code Section 3289(b),  
20 accruing from the date the wages were due and payable.

21 COUNT FOUR: VIOLATION OF CA BUSINESS AND PROFESSIONS CODE SECTION  
22 17200 UNFAIR BUSINESS PRACTICES

23 37. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-36 as if fully stated  
24 herein.  
25

1 38. At all times relevant herein, Plaintiff's employment with BARRET BUSINESS  
2 SERVICES, INC. was subject to the California Labor Code and applicable Wage Orders  
3 promulgated by the California Industrial Welfare Commission, which required all  
4 employees to be paid overtime for work performed in excess of forty hours per week or  
5 eight hours per day, unless specifically exempted by the law.

6 39. At all times relevant herein, as the employer of Plaintiff, defendants were subject to the  
7 California Unfair Trade Practices Act (California Business and Professions Code §  
8 §17000 et seq.), but failed to pay the Plaintiff overtime pay as required by applicable  
9 California Labor Code and applicable Wage Orders.

10 40. During the period plaintiff was employed with Defendants BARRET BUSNISS  
11 SERVICES, INC. and WM. EBERT CONSTRUCTION, INC., Defendants failed to pay  
12 Plaintiff legally required overtime pay to which he was legally entitled, with defendants  
13 keeping to themselves the amount which should have been paid to Plaintiff.

14 41. In doing so, defendants violated California Unfair Trade Practices Act, Business and  
15 Professions Code §17200, et seq. by committing acts prohibited by applicable California  
16 Labor Code provisions, California Wage Orders, and the FLSA, thus giving them a  
17 competitive advantage over other employers and businesses with whom defendants were  
18 in competition and who were in compliance with the law.

19 42. As a direct and proximate result of defendants' violations and failure to pay the required  
20 overtime pay, the Plaintiff's rights under the law were violated and the Plaintiff incurred  
21 general damages in the form of unpaid wages amounting to approximately \$36,062.75.

22 43. Defendants had been aware of the existence and requirements of the Unfair Trade  
23 Practices Act and the requirements of state and federal wage and hours laws, but  
24 willfully, knowingly, and intentionally failed to pay Plaintiff overtime pay due.  
25

1 44. Plaintiff, having been illegally deprived of the overtime pay to which he was legally  
2 entitled, herein seeks restitution of such wages pursuant to the Business and Professions  
3 Code §17203 in the amount of approximately \$36,062.75.

4 COUNT FIVE: VIOLATION OF CA LABOR CODE SECTION 226.7

5 FAILURE TO PROVIDE MEAL PERIODS

6 45. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-42 as if fully stated  
7 herein.

8 46. At relevant times herein, Plaintiff's employment with BARRET BUSINESS SERVICES,  
9 INC. was subject to the provisions of California Labor Code § 226.7, which requires  
10 employers to provide employees a half-hour meal period for every five hours worked,  
11 unless expressly exempted.

12 47. During employment with BARRET BUSINESS SERVICES, INC. Plaintiff worked more  
13 than 8 hours per day, and was provided neither meal nor rest periods as required by law.

14 48. Pursuant to California Labor Code section 226.7, Plaintiff is entitled to recover one  
15 additional hour of pay at each employee's regular rate of compensation, for each time  
16 that Plaintiff was not provided the required meal period.

17 49. Plaintiff is therefore entitled to payment, in the amount of approximately \$36,138.24 in  
18 compensation for all meal periods that defendants failed to provide.

19 PRAYER FOR RELIEF

20 WHEREFORE, Plaintiff prays for the following relief:

21 50. For compensatory damages per CA Labor Code §1194 for unpaid overtime wages in  
22 excess of approximately \$36,062.75;

23 51. For liquidated damages per the FLSA equal to unpaid overtime wages in excess of  
24 approximately \$36,062.75;

1 52. For restitution of unpaid overtime pay pursuant to California Business and Professions  
2 Code §17203 in excess of approximately \$36,062.75;

3 53. For pre-judgment interest of 10% on the unpaid overtime compensation and unpaid  
4 salaries pursuant to California Labor Code §1194(a) totaling \$11,571.76;

5 54. For meal period premium wages in the amount of \$36,138.24;

6 55. For waiting time penalty damages of thirty days wages to Plaintiff, respectively, pursuant  
7 to California Labor Code § 203 in excess of \$7,529.41;

8 56. In total Plaintiff pray for approximately \$127,289.41 in damages for state and federal  
9 labor violations and in addition;

10 57. For reasonable attorney's fees pursuant to California Labor Code §1194(a) and 29 U.S.C.  
11 §216(b) of the FLSA;

12 58. For costs of suit herein; and

13 59. For such other and further relief as the Court may deem appropriate.

14  
15 Dated this 23<sup>rd</sup> day of October

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Attorney for Plaintiffs

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

JAIME MORENO,	)	Case No.:
	)	
Plaintiff,	)	
	)	PLAINTIFF DEMANDS JURY TRIAL
vs.	)	
	)	
BARRET BUSNISS SERVICES, INC. and	)	
	)	
WM. EBERT CONSTRUCTION, INC. and	)	
	)	
DOES 1-10	)	
	)	
Defendant	)	
	)	
	)	

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PLAINTIFF DEMANDS JURY TRIAL